

In the Matter of the Application of)
NEXTG NETWORKS OF CALIFORNIA,)
INC., D/B/A/ NEXTG NETWORKS WEST)
For a Certificate of Authority.)

DECISION AND ORDER NO. 23653

Filed Sept. 12, 2007
At 12 o'clock P.M.

Karen Higdon.
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

Commission, State of Hawaii.
Karen Higash.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
NEXTG NETWORKS OF CALIFORNIA,)
INC., D/B/A/ NEXTG NETWORKS WEST)
For a Certificate of Authority.)

Docket No. 2007-0074

Decision and Order No. 23653

DECISION AND ORDER

By this Decision and Order, the commission grants NEXTG NETWORKS OF CALIFORNIA, INC., d/b/a/ NEXTG NETWORKS WEST ("Applicant") a certificate of authority ("COA") to provide facilities-based intrastate interexchange telecommunications services in the State of Hawaii ("State"), including dedicated transport service.

I.

Background

Applicant is a Delaware corporation whose principal place of business is San Jose, California. Applicant's Certificate of Incorporation was filed with the Delaware Secretary of State Division of Corporation on August 19, 2002, and Applicant was certified by the Department of Commerce and Consumer Affairs to transact business in Hawaii as a foreign corporation effective February 2, 2007.

A.

Applicant's Request

On March 21, 2007, Applicant filed its application for a COA to provide intrastate interexchange telecommunications services in the State ("Application"), pursuant to Hawaii Administrative Rules ("HAR") §§ 6-80-17(c) and -18(a).¹ Applicant also filed copies of its Articles of Incorporation and Certificate of Authority to do business in Hawaii as a foreign corporation (Exhibit A), proposed tariff (Exhibit B), Biographies of Key Personnel (Exhibit C), and consolidated financial statements submitted under Protective Order (Exhibit D) as attachments to the Application.

B.

Consumer Advocate's Position

On April 26, 2007, the Consumer Advocate filed its Statement of Position ("SOP") informing the commission that it does not object to the commission's issuance of a COA, provided that Applicant modifies its tariff in accordance with the amendments recommended by the Consumer Advocate.

¹Applicant served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex officio party to this docket pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and HAR § 6-61-62.

C.

Applicant's Revised Tariff

On May 14, 2007, Applicant filed a revised tariff in response to the Consumer Advocate's SOP. The revised tariff includes all of the amendments recommended by the Consumer Advocate.

II.

Discussion

A.

COA to Provide the Proposed Services

HRS § 269-7.5 prohibits a public utility from commencing business in the State without first obtaining a certificate of public convenience and necessity ("CPCN") from the commission.² HAR § 6-80-18(a) states that:

The commission shall issue a certificate of authority to any qualified applicant, authorizing the whole or any part of the telecommunications service covered by the application, if it finds that:

- (1) The applicant possesses sufficient technical, financial, and managerial resources and abilities to provide the proposed telecommunications service in the State;
- (2) The applicant is fit, willing, and able to properly perform the proposed telecommunications service and to conform to the terms, conditions, and rules prescribed or adopted by the commission; and

²On June 3, 1996, HAR ch. 6-80 took effect. HAR ch. 6-80, among other things, replaces the CPCN with a COA for telecommunications carriers, and establishes procedures for requesting and issuing a COA.

- (3) The proposed telecommunications service is, or will be, in the public interest.

HAR § 6-80-18(a).

Upon review of the Application, the commission makes the following findings pursuant to HAR § 6-80-18(a):

1. Applicant possesses sufficient technical, financial, and managerial resources and abilities to provide the proposed services, as evidenced by the management profiles and Financial Statements submitted in support of the Application.

2. Applicant is fit, willing, and able to properly perform the telecommunications services and to conform to the terms, conditions, and rules prescribed or adopted by the commission, as evidenced by Applicant's representations in its Application. Moreover, the commission's grant of a COA to Applicant to provide the proposed services will be conditioned upon Applicant's conformity to the terms, conditions, and rules prescribed or adopted by the commission as discussed below.

3. Applicant's proposed telecommunications services are in the public interest. The commission recognizes that additional service providers in the industry increase competition and provide the consumer with options in Hawaii's telecommunications market. As noted by the Consumer Advocate, Applicant's proposed services are in the public interest as "[t]he introduction of effective competition in the telecommunications industry is desirable to achieve the benefits that would not be present in a monopolistic environment."³

³Consumer Advocate SOP at 5.

Accordingly, the commission concludes that Applicant should be granted a COA to provide facilities-based intrastate interexchange telecommunications services in the State, subject to Section II.B below.

B.

Proposed Tariff Terms and Regulations

The commission finds that Applicant's proposed revised tariff, which includes the amendments recommended by the Consumer Advocate, is reasonable, except that the following modifications should be made:

1. HI P.U.C. Tariff No. 1, Original Sheet 16, Section 3.7 - Disputed Bills.

The last sentence in the first full paragraph should be revised by omitting the strikethrough language and adding the underlined as follows: "All other Customer complaints and inquiries regarding service or billing are subject to the jurisdiction of the Commission, which may be contacted at the following address and phone number"

2. HI P.U.C. Tariff No. 1, Original Sheet 13, Section 3.5 - Notices.

Section 3.5.A(1) should be revised to delete the following sentence to comply with HAR 6-80-87(14): "No Customer notice is required for minor rate increases or for rate decreases."⁴

⁴HAR 6-80-87 provides that a telecommunications carrier shall "[a]s soon as practical, notify its customers in writing of any changes in price, scope, or quality of service."

III.

Orders

1. Applicant is granted a COA to provide facilities-based intrastate interexchange telecommunications services in the State, including dedicated transport service.

2. As a holder of a COA, Applicant shall be subject to all applicable provisions of HRS ch. 269; HAR chs. 6-80 and 6-81; any other applicable State laws and commission rules; and any orders that the commission may issue from time to time.

3. Applicant's proposed tariff, as revised, is approved with the modifications described in Section II.B, supra. Applicant shall include the modifications set forth in Section II.B, supra, and shall ensure that the appropriate issue and effective dates are reflected in the tariff. An original and eight (8) copies of the further revised tariff shall be filed with the commission, and two (2) additional copies shall be served on the Consumer Advocate.

4. Within thirty (30) days from the date of this Decision and Order, Applicant shall pay a public utility fee of \$60, pursuant to HRS § 269-30. The business check shall be made payable to the Hawaii Public Utilities Commission, and sent to the commission's office at 465 S. King Street, Room #103, Honolulu, HI, 96813.

5. Within thirty (30) days from the date of this Decision and Order, Applicant shall also pay a telecommunications relay service ("TRS") contribution of \$8.00, established pursuant to: (A) HRS § 269-16.6; and (B) Decision and Order No. 23481,

filed on June 7, 2007, in Docket No. 2007-0113. The business check shall be made payable to "Hawaii TRS," and sent to the Hawaii TRS Administrator, Solix, Inc.,⁵ 80 S. Jefferson Road, Whippany, NJ 07981. Written proof of payment shall be sent to the commission.

6. If Applicant will own, operate, or maintain any subsurface installation as defined by HRS § 269E-2, it shall register as an operator and pay to the commission a one-time registration fee of \$350 for the administration and operation of the Hawaii One Call Center,⁶ pursuant to Decision and Order No. 23086, filed on November 28, 2006, in Docket No. 05-0195.

7. Applicant shall promptly comply with the requirements set forth above. Failure to promptly comply with these requirements may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.


⁵Solix, Inc. was formerly known as NECA Services, Inc.

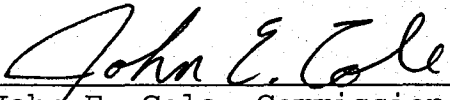
⁶The Hawaii One Call Center may be contacted by telephone at (877) 668-4001.

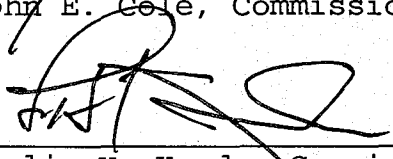
DONE at Honolulu, Hawaii

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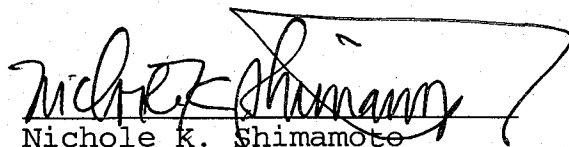
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Nichole K. Shimamoto
Commission Counsel

2007-0074

CERTIFICATE OF SERVICE

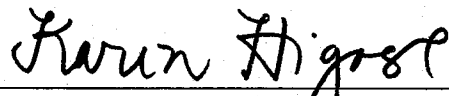
I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23653 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

CATHERINE P. AWAKUNI
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DATED: SEP 12 2007